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FILED IN THE  
U.S. DISTRICT COURT  
EASTERN DISTRICT OF WASHINGTON

Mar 08, 2022

SEAN F. MCAVOY, CLERK

UNITED STATES DISTRICT COURT  
FOR THE EASTERN DISTRICT OF WASHINGTON

UNITED STATES OF AMERICA,

Plaintiff,

Case No. 2:20-CR-00186-RMP

v.

Plea Agreement

ROLANDO M. ZBIKOWSKI,

Defendant.

Plaintiff, United States of America, by and through Vanessa R. Waldref, United States Attorney for the Eastern District of Washington, and Michael J. Ellis, Assistant United States Attorney for the Eastern District of Washington, and the Defendant, Rolando M. Zbikowski, and the Defendant's counsel, Christina Wong, agree to the following Plea Agreement:

1) Guilty Plea and Maximum Statutory Penalties:

The Defendant, Rolando M. Zbikowski, agrees to plead guilty to Count 5 of the Superseding Indictment filed on April 14, 2021, charging the Defendant with Misappropriation of Postal Funds, in violation of 18 U.S.C. § 1711. The Defendant understands that this charge is a Class A Misdemeanor. The Defendant further understands that the maximum statutory penalty for Misappropriation of Postal Funds, in violation of 18 U.S.C. § 1711, is not more than one year imprisonment; a fine not to

1 exceed \$100,000; a term of supervised release of not more than one year; the payment  
2 of restitution; and a \$25 special penalty assessment.

3 The Defendant understands that a violation of a condition of supervised release  
4 carries an additional penalty of re-imprisonment for all or part of the term of  
5 supervised release without credit for time previously served on post-release  
6 supervision.

7 The Defendant understands that, if the Court imposes probation, it cannot be  
8 more than a five (5) year term. 18 U.S.C. § 3561.

9 The Defendant understands that a violation of a condition of probation can  
10 result in the Court continuing probation, with or without extending the term or  
11 modifying the conditions, or in the Court revoking probation and imposing any  
12 sentence that initially could have been imposed up to the maximum statutory penalties  
13 acknowledged above. The Defendant further understands that revocation of probation  
14 may be required by statute or the United States Sentencing Guidelines (hereinafter  
15 “USSG”) for certain violations. 18 U.S.C. § 3565; USSG § 7B1.3. The Defendant  
16 further understands that any sentence following the revocation of probation shall be  
17 without credit for time previously served on probation. USSG § 7B1.5.

18 2) The Court is Not a Party to the Agreement:

19 The Court is not a party to this Plea Agreement and may accept or reject this  
20 Plea Agreement. Sentencing is a matter that is solely within the discretion of the  
21 Court. The Defendant understands that the Court is under no obligation to accept any  
22 recommendations made by the United States and/or by the Defendant; that the Court  
23 will obtain an independent report and sentencing recommendation from the U.S.  
24 Probation Office; and that the Court may, in its discretion, impose any sentence it  
25 deems appropriate up to the statutory maximums stated in this Plea Agreement.

26 The Defendant acknowledges that no promises of any type have been made to  
27 the Defendant with respect to the sentence the Court will impose in this matter. The  
28 Defendant understands that the Court is required to consider the applicable sentencing

1 guideline range, but may depart upward or downward under the appropriate  
2 circumstances.

3 The Defendant also understands that should the sentencing judge decide not to  
4 accept any of the parties' recommendations, that decision is not a basis for  
5 withdrawing from this Plea Agreement or a basis for withdrawing this plea of guilty.

6 3) Effect on Immigration Status:

7 The Defendant recognizes that pleading guilty may have consequences with  
8 respect to his immigration status if he is not a citizen of the United States. Under  
9 federal law, a broad range of crimes may be removable offenses, including the offense  
10 to which the Defendant is pleading guilty. Removal and other immigration  
11 consequences are the subject of a separate proceeding, however, and the Defendant  
12 understands that while deportation and/or removal appears to be a virtual certainty if  
13 he is not a citizen of the United States, no one, including his attorney or the district  
14 court, can predict with absolute certainty the effect of his conviction on his  
15 immigration status. The Defendant nevertheless affirms that he wants to plead guilty  
16 regardless of any immigration consequences that his plea may entail, even if  
17 automatic removal from the United States is a virtual certainty if he is not a United  
18 States citizen.

19 4) Waiver of Constitutional Rights:

20 The Defendant understands that by entering this plea of guilty the Defendant is  
21 knowingly and voluntarily waiving certain constitutional rights, including:

- 22 a) The right to a jury trial;
- 23 b) The right to see, hear and question the witnesses;
- 24 c) The right to remain silent at trial;
- 25 d) The right to testify at trial; and
- 26 e) The right to compel witnesses to testify.

27 While the Defendant is waiving certain constitutional rights, the Defendant  
28 understands the Defendant retains the right to be assisted through the sentencing and

1 any direct appeal of the conviction and sentence by an attorney, who will be appointed  
2 at no cost if the Defendant cannot afford to hire an attorney. The Defendant also  
3 acknowledges that any pretrial motions currently pending before the Court are waived.

4 5) Elements of the Offense:

5 The United States and the Defendant agree that in order to convict the  
6 Defendant of Misappropriation of Postal Funds, in violation of 18 U.S.C. § 1711, the  
7 United States would have to prove beyond a reasonable doubt the following elements:

8 *First*, on or about October 3, 2019, in the Eastern District of Washington, the  
9 Defendant, Rolando M. Zbikowski, knowingly and intentionally used and converted  
10 to his own personal use, without authorization of law, postal funds of \$1,000 or less;

11 *Second*, at the time he converted the funds to his own personal use, the  
12 Defendant was working as an officer or employee of the United States Postal Service;  
13 and

14 *Third*, the funds that the Defendant converted to his own personal use had come  
15 into his hands as a result of and were under his control in the execution of his  
16 employment and services as an officer or employee of the United States Postal  
17 Service.

18 6) Factual Basis and Statement of Facts:

19 The United States and the Defendant, Rolando M. Zbikowski, stipulate and  
20 agree that the following facts are accurate; that the United States could prove these  
21 facts beyond a reasonable doubt at trial; and these facts constitute an adequate factual  
22 basis for the Defendant's guilty plea. This statement of facts does not preclude either  
23 party from presenting and arguing, for sentencing purposes, additional facts which are  
24 relevant to the guideline computation or sentencing, unless otherwise prohibited in  
25 this Plea Agreement.

26 As relevant to this criminal matter, between April 2019 and October 2019, the  
27 Defendant was employed by the United States Postal Service as a sale and  
28 service/distribution associate. Between April 2019 and October 2019, the United

1 States Postal Service Office of Inspector General (hereinafter “USPS-OIG”)  
2 conducted a series of integrity tests concerning the Defendant. In April and August  
3 2019, the USPS-OIG returned money orders to the Defendant as “lost and found”  
4 items at the Defendant’s place of employment at a United States Post Office in  
5 Spokane County, Washington. The Defendant, who was supposed to handle the  
6 returned money orders as lost items, instead converted both to his own use, resulting  
7 in a total loss to the United States Postal Service of \$135. Additionally, when special  
8 agents with the USPS-OIG examined the Defendant’s trash on various occasions  
9 between May and September 2019, mail items belonging to other persons, including  
10 S.C. and I.C., were found in the Defendant’s trash.

11 Special agents with the USPS-OIG interviewed the Defendant about his  
12 misconduct on October 3, 2019. The Defendant admitted to both having converted the  
13 “lost and found” money orders and taking mail items home. The Defendant’s various  
14 United States Postal Service accounts were audited after the October 3, 2019,  
15 interview, and a total shortage of \$172.30 was discovered. The Defendant was re-  
16 interviewed on October 4, 2019 and admitted to converting the missing funds for  
17 personal use.

18 The Defendant admits that, between April and October 2019, the Defendant  
19 was working as an officer or employee of the United States Postal Service. The  
20 Defendant further admits that, while working as an officer or employee of the United  
21 States Postal Service, the Defendant knowingly and intentionally converted to his own  
22 personal use the above monies that had come into his hands as a result of and were  
23 under his control in the execution of his employment and services as an officer or  
24 employee of the United States Postal Service.

25 7) The United States Agrees:

26 a) Dismissal(s):

27 At the time of sentencing, the United States agrees to move to dismiss Counts 1,  
28 2, 3, and 4 of the Superseding Indictment against the Defendant.

1           b)    No Additional Charges:

2           The United States Attorney's Office for the Eastern District of Washington  
3 agrees not to bring any additional charges against the Defendant based upon  
4 information in its possession at the time of this Plea Agreement and arising out of  
5 Defendant's conduct involving illegal activity charged in this Indictment, unless the  
6 Defendant breaches this Plea Agreement any time before or after sentencing.

7           8)   United States Sentencing Guideline Calculations:

8           The Defendant understands and acknowledges that the United States Sentencing  
9 Guidelines are applicable to this case and that the Court will determine the  
10 Defendant's applicable sentencing guideline range at the time of sentencing. The  
11 Defendant also understands, however, that pursuant to *United States v. Booker*, 543  
12 U.S. 220 (2005), the Sentencing Guideline range is advisory and that the Court is  
13 required to consider the factors set forth in 18 U.S.C. § 3553(a) and to impose a  
14 reasonable sentence.

15          a)    Base Offense Level:

16          The United States and the Defendant agree that the base offense level for  
17 Misappropriation of Postal Funds is 6. *See* USSG § 2B1.1(a)(2).

18          b)    Acceptance of Responsibility:

19          If the Defendant pleads guilty and demonstrates a recognition and an  
20 affirmative acceptance of personal responsibility for the criminal conduct; provides  
21 complete and accurate information during the sentencing process; does not commit  
22 any obstructive conduct; accepts this Plea Agreement; and enters a plea of guilty no  
23 later than March 8, 2022, the United States will recommend that the Defendant  
24 receive a two (2) level downward adjustment for acceptance of responsibility,  
25 pursuant to USSG §3E1.1(a).

26          The Defendant and the United States agree that the United States may at its  
27 option and upon written notice to the Defendant, not recommend a two (2) level  
28 downward reduction for acceptance of responsibility if, prior to the imposition of

1 sentence, the Defendant is charged or convicted of any criminal offense whatsoever or  
2 if the Defendant tests positive for any controlled substance.

3 c) Criminal History:

4 The United States and the Defendant understand that the Defendant's criminal  
5 history computation is tentative and that ultimately the Defendant's criminal history  
6 category will be determined by the Court after review of the Presentence Investigative  
7 Report. The United States and the Defendant have made no agreement and make no  
8 representations as to the criminal history category, which shall be determined after the  
9 Presentence Investigation Report is completed.

10 9) Departures/Variance:

11 There are no aggravating or mitigating factors with respect to the correct  
12 calculation of the Sentencing Guidelines. The United States and the Defendant agree  
13 that they will not seek either an upward or a downward departure from the applicable  
14 Guidelines.

15 10) Incarceration/Probation:

16 The United States agrees to recommend that no sentence of imprisonment or  
17 probation be imposed. The Defendant is free to recommend any legal sentence.

18 11) Criminal Fine:

19 The United States and the Defendant are free to make whatever  
20 recommendation concerning the imposition of a criminal fine that they believe is  
21 appropriate.

22 12) Supervised Release:

23 The United States agrees to recommend that no term of supervised release be  
24 imposed.

25 13) Restitution:

26 Pursuant to 18 U.S.C. § 3663(a)(3), in exchange for the United States  
27 dismissing Counts 1, 2, 3, and 4, and/or agreeing to not bring additional charges, the  
28 Defendant expressly and voluntarily agrees to pay restitution to: (1) the United States



1 Postal Service; (2) S.C.; and (3) I.C. The United States and the Defendant also hereby  
2 stipulate and agree that the Court shall order full restitution, as appropriate, to any  
3 entity, organization, insurance company, or individual(s) who provided compensation  
4 to any victim(s) with respect to the losses.

5 With respect to restitution, the United States and the Defendant agree to the  
6 following:

7 a. Restitution Amount and Interest

8 The United States and the Defendant hereby stipulate and agree that, pursuant  
9 to 18 U.S.C. §§ 3663(a)(3) and 3664, the Court should order restitution in an amount  
10 to be determined at or before sentencing. The Defendant agrees that, at a minimum,  
11 the United States Postal Service, S.C., and I.C. qualify as victims to whom restitution  
12 is owed. The United States and the Defendant agree that interest on this restitution  
13 amount, if any, should be waived.

14 b. Payments

15 To the extent that the Court orders restitution, the United States and the  
16 Defendant agree that the Court will set a restitution payment schedule based on his  
17 financial circumstances. *See* 18 U.S.C. § 3664(f)(2), (3)(A). Regardless, the  
18 Defendant agrees to pay not less than 10% of his net monthly income towards his  
19 restitution obligation.

20 c. Treasury Offset Program and Collection

21 The Defendant understands the Treasury Offset Program (“TOP”) collects  
22 delinquent debts owed to federal agencies. If applicable, the TOP may take part or all  
23 of the Defendant’s federal tax refund, federal retirement benefits, or other federal  
24 benefits and apply these monies to the Defendant’s restitution obligations. *See*  
25 26 U.S.C. § 6402(d); 31 U.S.C. § 3720A; 31 U.S.C. § 3716.

26 The Defendant also understands the United States may, notwithstanding the  
27 Court-imposed payment schedule, pursue other avenues to ensure the restitution  
28 obligation is satisfied, including, but not limited to, garnishment of available funds,



1 wages, or assets. *See* 18 U.S.C. §§ 3572, 3613, 3664(m). Nothing in this  
2 acknowledgment shall be construed to limit the Defendant's ability to assert any  
3 specifically identified exemptions as provided by law, except as set forth in this Plea  
4 Agreement.

5 Until a fine or restitution order is paid in full, the Defendant agrees fully to  
6 disclose all assets in which he has any interest or over which he exercises control,  
7 directly or indirectly, including those held by a spouse, parent, nominee, or third party.  
8 Until such time as the fine or restitution order is paid in full, the Defendant agrees to  
9 provide waivers, consents or releases requested by the U.S. Attorney's Office to  
10 access records to verify the financial information.

11 d. Notifications and Waivers

12 The Defendant agrees to notify the Court and the United States of any material  
13 change in his economic circumstances (e.g., inheritances, monetary gifts, changed  
14 employment, or income increases) that might affect his ability to pay restitution. *See*  
15 18 U.S.C. § 3664(k). This obligation ceases when the restitution is paid-in-full.

16 The Defendant agrees to notify the United States of any address change within  
17 30 days of that change. *See* 18 U.S.C. § 3612(b)(1)(F). This obligation ceases when  
18 the restitution is paid-in-full.

19 The Defendant acknowledges that the Court's decision regarding restitution is  
20 final and non-appealable. Neither party may withdraw from the Plea Agreement based  
21 on the ultimate amount or restitution ordered.

22 14) Mandatory Special Penalty Assessment:

23 The Defendant agrees to pay the \$25 mandatory special penalty assessment to  
24 the Clerk of Court for the Eastern District of Washington, at or before sentencing,  
25 pursuant to 18 U.S.C. § 3013 and shall provide a receipt from the Clerk to the United  
26 States before sentencing as proof of this payment.

27 //

28 //

1           15) Additional Violations of Law Can Void Plea Agreement:

2           The Defendant and the United States agree that the United States may at its  
3 option and upon written notice to the Defendant, withdraw from this Plea Agreement  
4 or modify its recommendation for sentence if, prior to the imposition of sentence, the  
5 Defendant is charged with or convicted of any criminal offense whatsoever or if the  
6 Defendant tests positive for any controlled substance.

7           16) Waiver of Right to Direct Appeal and to Collateral Attack under  
8 28 U.S.C. § 2255:

9           The Defendant understands that he has a limited right to appeal or challenge the  
10 conviction and sentence imposed by the Court. The Defendant hereby expressly  
11 waives his right to appeal his conviction and the sentence the Court imposes,  
12 including any restitution order. The Defendant further expressly waives his right to  
13 file any post-conviction motion attacking his conviction and sentence, including a  
14 motion pursuant to 28 U.S.C. § 2255, except one based upon ineffective assistance of  
15 counsel based on information not now known by the Defendant and which, in the  
16 exercise of due diligence, could not be known by the Defendant by the time the Court  
17 imposes the sentence.

18           Nothing in this Plea Agreement shall preclude the United States from opposing  
19 any post-conviction motion for a reduction of sentence or other attack of the  
20 conviction or sentence, including, but not limited to, proceedings pursuant to  
21 28 U.S.C. § 2255.

22           If the Defendant believes that the United States has not fulfilled its obligations  
23 under this Plea Agreement, the Defendant will object at the time of sentencing; further  
24 objections are waived.

25           17) Waiver of Attorney Fees and Costs:

26           The Defendant agrees to waive all rights under the “Hyde Amendment,”  
27 Section 617, P.L. 105- 119 (Nov. 26, 1997), to recover attorneys’ fees or other  
28 litigation expenses in connection with the investigation and prosecution of all charges

1 in the above-captioned matter and of any related allegations (including without  
2 limitation any charges to be dismissed pursuant to this plea agreement and any  
3 charges previously dismissed).

4 18) Integration Clause:

5 The United States and the Defendant acknowledge that this document  
6 constitutes the entire Plea Agreement between the United States and the Defendant,  
7 and no other promises, agreements, or conditions exist between the United States and  
8 the Defendant concerning the resolution of the case. This Plea Agreement is binding  
9 only upon the United States Attorney's Office for the Eastern District of Washington,  
10 and cannot bind other federal, state or local authorities. The United States and the  
11 Defendant agree that this agreement cannot be modified except in a writing that is  
12 signed by the United States and the Defendant.


13 Approvals and Signatures

14 Agreed and submitted on behalf of the United States Attorney's Office for  
15 the Eastern District of Washington.

16 Vanessa R. Waldref  
17 United States Attorney

18  
19 


20 Michael J. Ellis  
21 Assistant United States Attorney

22   
23 Date

24 I have read this Plea Agreement and have carefully reviewed and discussed  
25 every part of the agreement with my attorney. I understand and voluntarily enter into  
26 this Plea Agreement. Furthermore, I have consulted with my attorney about my rights,  
27 I understand those rights, and I am satisfied with the representation of my attorney in  
28 this case. No other promises or inducements have been made to me, other than those

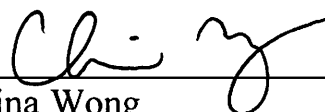
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1 contained in this Plea Agreement and no one has threatened or forced me in any way  
2 to enter into this Plea Agreement. I am agreeing to plead guilty because I am guilty.

3   
4 Rolando M. Zbikowski  
5 Defendant

March 8, 2022  
Date

6 I have read the Plea Agreement and have discussed the contents of the  
7 agreement with my client. The Plea Agreement accurately and completely sets forth  
8 the entirety of the agreement between the parties. I concur in my client's decision to  
9 plead guilty as set forth in the Plea Agreement. There is no legal reason why the Court  
10 should not accept the Defendant's plea of guilty.

11   
12 Christina Wong  
13 Attorney for the Defendant

3/8/22  
Date